

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS ALBERTO CASTRO-SANTOS,

Defendant.

8:21CR112**ORDER**

This matter is before the Court on defendant Luis Alberto Castro-Santos's ("Castro-Santos") *pro se* Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 176). Though he calls his motion a § 2255 motion and files it on the proper form, Santos states just one ground for relief—Amendment 821 to the United States Sentencing Guidelines. That claim is arguably better suited for a motion to reduce sentence pursuant to 18 U.S.C. § 3582(c)(2), which authorizes defendants who have "been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission" to move for a sentence reduction.

On November 1, 2023, the Court entered General Order No. 2023-09 in Castro-Santos's case and appointed the Federal Public Defender for the District of Nebraska to represent him to determine whether he may qualify for relief under Amendment 821 (Filing No. 173). In light of that appointment and the fact that the representation covers the only issue raised in Castro-Santos's present motion, the Court finds his *pro se* motion should be denied. *See, e.g., United States v. Haubrich*, 744 F.3d 554, 557 (8th Cir. 2014) ("The district court 'has no obligation to entertain pro se motions filed by a represented party.'" (quoting *Abdullah v. United States*, 240 F.3d 683, 686 (8th Cir. 2001))).

Given this disposition, the Court does not consider Castro-Santos's motion to be a first or initial § 2255 motion for purposes of applying § 2255(h)'s restrictions on "second or successive" § 2255 motions. *Cf. Castro v. United States*, 540 U.S. 375, 383 (2003) (discussing when a § 2255 motion is fairly considered a first § 2255 motion for purposes of § 2255(h)).

Based on the foregoing,

IT IS ORDERED:

1. Defendant Luis Alberto Castro-Santos's *pro se* Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Filing No. 176) is denied.
2. The Clerk of Court is directed to mail a copy of this order to Castro-Santos at his address of record.

Dated this 4th day of December 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge